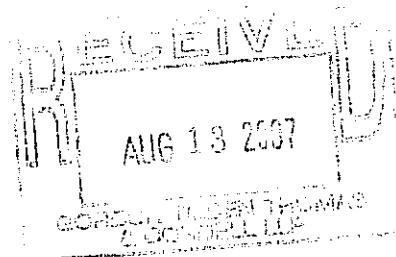


EXHIBIT D



1 The Honorable Marsha J. Pechman  
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8 UNITED STATES DISTRICT COURT  
 9 WESTERN DISTRICT OF WASHINGTON  
 10 AT SEATTLE

11 Dianne L. Kelley and Kenneth Hansen, ) No. C07-0475 MJP  
 12 Plaintiffs, ) PUTATIVE CLASS ACTION  
 13 v. ) PLAINTIFFS' THIRD SET OF  
 14 Microsoft Corporation, a Washington ) INTERROGATORIES AND  
 Corporation, ) REQUESTS FOR PRODUCTION  
 15 Defendant. ) OF DOCUMENTS PROPOUNDED  
 16 ) TO DEFENDANT and  
 17 ) **DEFENDANT'S OBJECTIONS**  
 18 ) **AND RESPONSES THERETO**

19 Defendant Microsoft Corporation objects and responds to Plaintiffs' third set of  
 20 interrogatories and requests for productions as follows:

21 **I. GENERAL OBJECTIONS**

22 1. **Limitations on Discovery.** This case is currently an individual action being  
 23 prosecuted by two individuals, and the parties have agreed to bifurcate discovery in this case  
 24 such that discovery related to whether a class should be certified shall occur before any  
 25 discovery going to the merits of the case will commence. Thus, unless and until the case is  
 26 certified as a class action (which Microsoft believes it should not be), discovery will be  
 27 confined to issues relevant to class certification. Microsoft therefore objects to Plaintiffs'  
 discovery requests to the extent they purport to seek information that is not relevant to class  
 certification issues.

Microsoft's Responses to Third Discovery Requests  
 (C07-0475 MJP) — 1

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 Suite 3200 • 1201 Third Avenue  
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1           2. **Privilege.** Microsoft objects to Plaintiffs' discovery requests to the extent they  
 2 seek information protected from disclosure by any privilege or other protection including,  
 3 without limitation, the attorney-client privilege, a settlement privilege, the work product  
 4 doctrine, or any other constitutional, statutory, common law or regulatory protection,  
 5 immunity or proscription from disclosure. Where information is withheld under claim of  
 6 privilege, Microsoft will so indicate on a privilege log. Microsoft does not intend the  
 7 inadvertent production of any privileged or protected information to constitute a waiver of  
 8 Microsoft's rights to assert any applicable privilege or protection with respect to any such  
 9 information or any other matter.

10           3. **Obligations Beyond Civil Rules.** Microsoft objects to Plaintiffs' discovery  
 11 requests to the extent they attempt to impose obligations upon Microsoft that are beyond the  
 12 scope of the Federal Rules of Civil Procedure.

13           4. **Proportionality.** Microsoft objects to Plaintiffs' discovery requests as  
 14 overbroad and unduly burdensome to the extent that they require extensive, unreasonable,  
 15 expensive, and labor-intensive investigation that is out of proportion to, and cannot be  
 16 justified in light of, the small size of the Plaintiffs' claims and the limited nature of class  
 17 certification issues, at least unless and until the case is certified as a class action (which  
 18 Microsoft believes it should not be). *See* Fed. R. Civ. P. 26(b)(1)(C).

19           5. **No Waiver.** By responding to Plaintiffs' particular discovery requests,  
 20 Microsoft does not waive the General Objections or any specific objection to a particular  
 21 request. Similarly, by stating a specific objection in response to a particular request,  
 22 Microsoft does not waive the General Objections. Microsoft expressly reserves the right to  
 23 challenge the competency, relevancy, materiality or admissibility of, or otherwise object to  
 24 the introduction into evidence of, any information provided in response to these discovery  
 25 requests.

26           6. **Supplementation.** Microsoft's responses to Plaintiffs' discovery requests are  
 27 based upon present knowledge, information and belief following its diligent search and

1 reasonable inquiry. Discovery and investigation are ongoing. As additional information and  
 2 documents become available in the course of discovery or otherwise, Microsoft may deem it  
 3 appropriate to supplement, alter or amend these responses and objections to Plaintiffs'  
 4 discovery requests and reserves the right to do so. Microsoft does not thereby undertake any  
 5 obligation to supplement beyond that imposed by the Federal Rules of Civil Procedure.

6       **7. Confidential and Proprietary Information.** Microsoft objects to Plaintiffs'  
 7 discovery requests to the extent they invade any right to privacy under any applicable state or  
 8 federal law or constitutional provision and/or seek trade secrets, confidential, business,  
 9 financial, proprietary, competitive or sensitive commercial information that is entitled to  
 10 protection under any applicable law including, without limitation, Fed. R. Civ. P. 26. Such  
 11 information and documents will not be produced absent entry of an appropriate order  
 12 protecting the confidentiality of the information. Microsoft is prepared to discuss with  
 13 Plaintiffs' counsel the appropriate scope and terms of an agreed protective order.

14       **8. New Documents.** Microsoft objects to Plaintiffs' requests for production to  
 15 the extent that they seek to impose an obligation on Microsoft to create new documents not  
 16 previously in existence, through recording or other capture of audio, visual and/or other  
 17 digital communications solely for the purpose of discovery, where communications are not  
 18 otherwise recorded or captured in the ordinary course of Microsoft's business. Examples of  
 19 such communications include telephone conversations, instant messages, and meetings.

20       **9. Information Outside Microsoft's Possession, Custody or Control.**  
 21 Microsoft objects to Plaintiffs' discovery requests to the extent they seek information that is  
 22 not in Microsoft's possession, custody or control.

23       **10. Information Already in Plaintiffs' Possession or Otherwise Available.**  
 24 Microsoft objects to Plaintiffs' discovery requests to the extent they seek information already  
 25 within Plaintiffs' possession, publicly available or otherwise available to Plaintiffs from other  
 26 source(s) equally convenient, less burdensome or less expensive.

11. For the convenience of the parties and the Court, Microsoft's counsel has electronically scanned Plaintiffs' discovery requests to create a new document that contains both the original requests and Microsoft's responses and objections to each. Any deviation from the original discovery requests is unintentional.

## II. SPECIFIC OBJECTIONS AND RESPONSES

## INTERROGATORIES

INTERROGATORY NO. 5: Identify by caption, date, court, arbitration organization, and docket number, all consumer class actions (whether or not certified as such) that were commenced against you at any time after January 1, 1993, in any court or with any arbitration organization.

**ANSWER:**

Microsoft objects to this interrogatory under General Objections 1 [discovery limited to class certification issues], 3 [exceeds scope of civil rules], 4 [proportionality], as seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and under General Objection 10 as calling for the production of information that could be compiled by Plaintiffs as easily as by Defendant. Microsoft does not maintain a list of all consumer class actions filed against it (whether in court or through arbitration) or records from which such information could be readily compiled. Microsoft further objects to Interrogatory 5 to the extent that such information is publicly available.

## REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 20: All orders on motions for class certification entered by any court or arbitration organization in any consumer class action (whether or not certified as such) that was commenced against you at any time after January 1, 1993.

### RESPONSE:

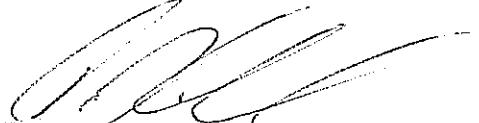
Microsoft's Responses to Third Discovery Requests  
(C07-0475 MJP) — 4  
SEA 2052872v3 0025936-000689

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(206) 622-3150 • Fax: (206) 757-7700

1 Microsoft objects to this RFP under General Objections 1 [discovery limited to class  
 2 certification issues], 3 [exceeds scope of civil rules], 4 [proportionality], as seeking  
 3 information that is neither relevant nor reasonably calculated to lead to the discovery of  
 4 admissible evidence, and under General Objection 10 as calling for the production of  
 5 information that could be obtained by Plaintiffs as easily as by Defendant. Microsoft does not  
 6 maintain a file of the requested orders or records from which such information could be  
 7 readily compiled. Microsoft further objects to RFP 20 to the extent that such information is  
 8 publicly available.

9  
 10  
 11  
 12 ANSWERS AND RESPONSES dated this 13th day of August, 2007.

13 **DAVIS WRIGHT TREMAINE LLP**

14 By 

15 

---

Stephen M. Rummage, WSBA #11168  
 16 Cassandra Kinkead, WSBA #22845  
 17 Charles S. Wright, WSBA #31940

18 *Of counsel:*

19 Charles B. Casper  
 20 Patrick T. Ryan  
 21 Montgomery, McCracken, Walker & Rhoads, LLP 123  
 S. Broad Street  
 Philadelphia, PA 19109  
 (215) 772-1500

22 Attorneys for Defendant

## VERIFICATION

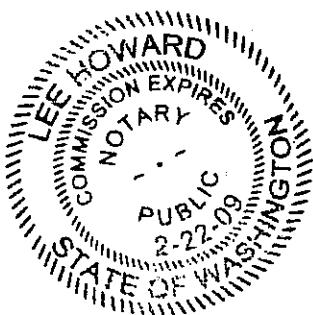
STATE OF WASHINGTON )  
COUNTY OF KING ) ss.

I, Thomas W. Burt, acknowledge and affirm under penalty of perjury under the laws of the State of Washington, individually and as authorized representative of Defendant MICROSOFT CORPORATION, that I have read said PLAINTIFFS' THIRD INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANT and DEFENDANT'S OBJECTIONS AND RESPONSES thereto, know the contents thereof, and state the foregoing answers and responses are true and complete to the best of my knowledge and belief.

By: Thomas W. Burt  
Thomas W. Burt

Its: Assistant Secretary

SUBSCRIBED AND SWORN to before me this 16 day of August, 2007, by



Duettmann  
(signature)

Lee Howard  
(print name)  
NOTARY PUBLIC in and for the State of Washington  
Residing at Seattle  
My appointment expires: 02-22-01

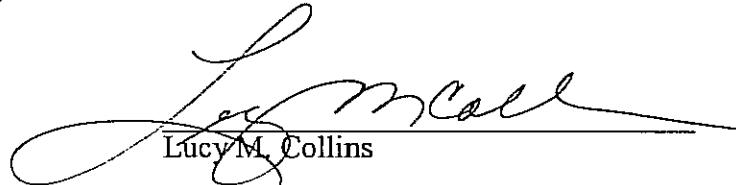
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CERTIFICATE OF SERVICE

I hereby certify that on August 13, 2007, I caused the foregoing Defendant's  
**Objections and Responses to Plaintiffs' Third Set of Interrogatories and Requests for  
Production of Documents Propounded to Defendant** to be served via hand delivery on the  
following:

Jeffrey I. Tilden  
Gordon Tilden Thomas & Cordell LLP  
1001 Fourth Avenue, Suite 4000  
Seattle, WA 98154

William C. Smart  
Keller Rohrback L.L.P.  
1201 Third Avenue, Suite 3200  
Seattle, WA 98101

DATED this 13<sup>th</sup> day of August, 2007.



Lucy M. Collins